

March 19, 2019

The Honorable Bryan Hughes  
P.O. Box 12068  
Capitol Station  
Austin, TX 78711

Via email: bryan.hughes@senate.texas.gov

Dear Senator Hughes,

As Texas lawyers for Texas communities, the Texas Civil Rights Project, with our partners listed below, writes to express strong opposition to Senate Bill 9 (“SB 9”), a bill that you introduced on March 7 (the eve of the bill filing deadline) in the Texas Senate, which represents a dangerous new assault on voting rights in Texas. SB 9 would sharply escalate the state’s ongoing campaign of voter suppression by making voting substantially harder for thousands of Texans and by spreading fear that people may be thrown in jail for honest mistakes while trying to vote. **We therefore urge you to immediately eliminate all provisions of this bill that do not deal with voting machine security (Article 5) or withdraw it from the Texas Senate; if you do not, we urge every member of the Texas Legislature to vote against this bill.**

Three categories of the bill stand out to us. *First, several measures would bolster an ongoing campaign of selective criminal prosecutions aimed at deterring people from voting, particularly voters from historically marginalized communities.* Most notoriously, two women of color (Crystal Mason and Rosa Ortega) recently received long prison sentences in Texas for seeking to cast a ballot because they mistakenly thought they were eligible to vote.<sup>1</sup> Although framed as a campaign to combat “voter fraud,” the fact that white men who *knowingly* commit more egregious election-related offenses receive significantly reduced punishment reveals the fundamentally discriminatory purpose of these efforts—one that has nothing to do with combating “fraud.”<sup>2</sup>

Your bill would double down on these efforts by granting even more authority to those prosecutors who have already demonstrated a penchant for pursuing a witch hunt against minority voters. For example, one provision would effectively eliminate any intent requirement for certain election related offenses, which signals a clear effort to make prosecutions against those who make honest mistakes

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<sup>1</sup> Ed Pilkington, *U.S. Voter Suppression: Why This Texas Woman is Facing Five Years’ Prison*, THE GUARDIAN, Aug. 28, 2018, <https://www.theguardian.com/us-news/2018/aug/27/crime-of-voting-texas-woman-crystal-mason-five-years-prison>; Anna Tinsley and Deanna Boyd, *Prison-bound? Grand Prairie Mom Sentenced to 8 Years for Illegal Voting Loses Appeal*, FT. WORTH STAR-TELEG., Nov. 28, 2018, <https://www.star-telegram.com/news/politics-government/election/article222302160.html>

<sup>2</sup> Anna Tinsley, *Tarrant County Judge Pleads Guilty, Resigns After Using Fake Signatures to get on Ballot*, FT. WORTH STAR-TELEG., Apr. 23, 2018, <https://www.star-telegram.com/news/politics-government/state-politics/article209608374.html>

in the voting process (like Crystal Mason and Rosa Ortega) much more common.<sup>3</sup> Whether intentionally or not, the bill as it is currently written would effectively open to prosecution any voter who casts a provisional ballot if they mistakenly believe they are registered or are mistakenly trying to vote in the wrong precinct. In the five largest urban counties in 2018 alone, 9,608 voters had provisional ballots rejected for these reasons. This bill would undermine the very purpose of having provisional ballots and likely violates the federal Help America Vote Act.

Elsewhere, the bill raises certain election related offenses, that also may commonly result from innocent mistakes, from misdemeanor level offenses to a state jail felony that is punishable by up to a maximum of 2 years in state jail and a fine up to \$10,000.<sup>4</sup> The bill would also create a new and vaguely worded offense which criminalizes conduct “within 1,000 feet of a polling place . . . that hinders a person from entering the polling place,” and would make it punishable by up to six months in jail and a fine of up to \$2,000.<sup>5</sup> This new offense could be misused against not only nonpartisan election protection volunteers who assist voters in that space, but also partisan electioneers exercising their First Amendment rights peacefully outside of polling places and ordinary citizens going about their daily life who just happen to pass through this greatly expanded zone.

Also troubling, the bill includes a provision granting immunity to law enforcement officials who commit election related crimes during an investigation or prosecution. This appears intended to incite undercover sting operations of civic engagement groups and political campaigns, which would amount to a state-sanctioned version of stunts conducted by groups like Project Veritas.<sup>6</sup>

***Second, the bill would impose substantial and unnecessary new barriers on those needing assistance in exercising their right to vote, in particular elderly and disabled voters.*** Two provisions appear to require people to fill out new forms if they either 1) drive voters to the polls who need curbside assistance,<sup>7</sup> or 2) provide assistance to voters who have a physical disability or who are unable to read the ballot.<sup>8</sup> Section 2.07 also grants partisan poll watchers new powers to snoop around in the paperwork submitted when a voter is being assisted, and Section 2.08 pierces the secrecy of the ballot booth by allowing partisan poll watchers and election officials to observe such voters as their ballots are marked.

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<sup>3</sup> S.B. 9, TEX. ELECTION CODE § 1.05, 86th Leg., Reg. Sess. (Tex. 2019).

<sup>4</sup> S.B. 9, TEX. ELECTION CODE § 1.03, 86th Leg., Reg. Sess. (Tex. 2019); S.B. 9, TEX. ELECTION CODE § 1.06, 86th Leg., Reg. Sess. (Tex. 2019).

<sup>5</sup> S.B. 9, TEX. ELECTION CODE § 1.04, 86th Leg., Reg. Sess. (Tex. 2019).

<sup>6</sup> S.B. 9, TEX. ELECTION CODE § 1.07, 86th Leg., Reg. Sess. (Tex. 2019).

<sup>7</sup> We understand that the Committee Substitute you have proposed would exempt only drivers who are family members of the voters, or those who are driving fewer than three voters.

<sup>8</sup> S.B. 9, TEX. ELECTION CODE § 2.11, 86th Leg., Reg. Sess. (Tex. 2019); S.B. 9, TEX. ELECTION CODE § 2.12, 86th Leg., Reg. Sess. (Tex. 2019).

***Third, SB 9 would loosen safeguards protecting voters' private information—apparently in order to make voter purges more common, such as the one recently conducted by Secretary of State David Whitley, and to enable the state's participation in programs like Kris Kobach's discredited Interstate Voter Registration Crosscheck Program.*** Section 4.01 would expand direct access to the electronic statewide voter registration database to “any official responsible for ensuring the integrity of the voter rolls or compliance with the election laws of this state,” a broad category that could include any number of government employees with only a tangential role in elections at any level of government in the state. It also explicitly authorizes the Attorney General's access to the electronic statewide voter registration database, a troubling provision given the Attorney General's recent attempt to politicize the voter rolls by falsely claiming to have discovered tens of thousands of non-citizens on the rolls.<sup>9</sup> Voter registration databases have proven to be one of the most vulnerable points of the election infrastructure,<sup>10</sup> and granting direct electronic access to tens of thousands of individuals would exponentially magnify this risk.

Incredibly, your bill would even allow for the disclosure of voters' Social Security Numbers and dates of birth to “to other states and jurisdictions” for them to conduct their own fishing expeditions.<sup>11</sup> This provision appears to be clearly aimed at removing obstacles to participation in the Interstate Voter Registration Crosscheck Program, a fatally flawed, notoriously unreliable, and largely defunct attempt to find duplicate registrations in other states.

These provisions would be concerning at any time, but they are especially brazen given that the state has been embroiled nearly all year in a scandal resulting from Mr. Whitley's misuse of voter data to purge naturalized citizens from the voter rolls under the guise of combating “voter fraud.” Only a few weeks ago, a federal judge described the State's misuse of voter data as “ham handed” and an example of “the power of government to strike fear and anxiety and to intimidate the least powerful among us.”<sup>12</sup> To reward the government's incompetence—or maliciousness—with *even more power over voter data* is absurd.

***Finally, there are other concerning provisions that do not fit neatly into any particular category but which warrant further scrutiny.*** For instance, Section 4.03 would impose a new and seemingly arbitrary requirement on Harris, Dallas, and Travis Counties to place countywide voting centers such that “a voter who resides in the precinct where the polling place is located [would not have] to travel

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<sup>9</sup> See, e.g., Press Release, AG Paxton: *Texas Secretary of State's Office Discovers Nearly 95,000 People Identified by DPS as Non-U.S. Citizens are Registered to Vote in Texas*, dated Jan. 25, 2019, <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-texas-secretary-states-office-discovers-nearly-95000-people-identified-dps-non-us-citizens>.

<sup>10</sup> See, e.g., United States Senate Committee Report, *Russian Targeting of Election Infrastructure During the 2016 Election: Summary of Initial Findings and Recommendations*, May 08, 2018.

<sup>11</sup> S.B. 9, TEX. ELECTION CODE § 4.02, 86th Leg., Reg. Sess. (Tex. 2019).

<sup>12</sup> *Texas League of United Latin American Citizens v. Whitley*, No. SA-19-CA-074-FB at 1 (W.D. Tex. Feb. 27, 2019) (order denying defendant's motion to dismiss).

more than three miles from the voter's residence to the polling place.”<sup>13</sup> The public needs to hear what impact this provision will have on the costs of operating countywide voting centers, including whether it might endanger the program in those counties. The Committee Substitute you have proposed also appears to ban any pre-filled voter registration applications, a tool that some civic engagement organizations have lawfully used to help voters quickly fill out these forms. Article 3's changes to laws regarding election contests also require further study, and an explanation from you as to their purpose and intended effect.

As a whole, this bill would take Texas in the wrong direction. In recent years, Texas' voter participation rates have been among the lowest in the country.<sup>14</sup> This is not because Texans care less about democracy than Americans elsewhere, but because state officials have gone out of their way to enact ever more restrictive voting laws in a bid to hold onto power. Far from combating widespread “voter fraud” — claims of which have been repeatedly disproven — this bill is the next, significantly more aggressive step in a voter suppression campaign that most recently included Mr. Whitley's disastrous voter purge.

Our elected officials should be making voting easier for eligible Texans, not harder. Our elected officials should cut the bureaucratic red tape that has been wrapped around the ballot box in recent years, not enact more of it. Our elected officials should empower all voters to take part in holding our leaders accountable, not shielding powerful officials from the will of the people. There are many steps that Texas can make to strengthen democracy in this state — but the first step must be to reject SB 9. **We therefore urge you to immediately eliminate all provisions of this bill that do not deal with voting machine security (Article 5) or withdraw it from the Texas Senate; if you do not, we urge every member of the Texas Legislature to vote against this bill.**

Sincerely,

*Clean Elections Texas*

*Common Cause Texas*

*Common Ground for Texans*

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<sup>13</sup> Section 4.03 applies to counties “with a population of more than one million,” and only Harris, Dallas, and Travis Counties meet that population test, and are either currently participating or have announced plans to participate in the countywide vote center program.

<sup>14</sup> Stephen Young, *Texas' Horrible Voter Turnout Continued in 2016, New Study Says*, DALLAS OBSERVER, Mar. 21, 2017, <https://www.dallasobserver.com/news/texas-voter-turnout-sucked-again-in-2016-9289492>.

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